

ARTICLE 79

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TEXT OF ARTICLE 79

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

INTRODUCTORY NOTE

1. The present study is limited to two questions which have arisen in connexion with Article 79: (1) the determination of States which may take the initiative in proposing Trusteeship Agreements; and (2) the determination of States which shall be parties to these Agreements. While the first has not provoked much debate, the second, particularly in so far as it hinges on the interpretation to be given to the phrase "states directly concerned", was debated in detail during the first session of the General Assembly. Most of the questions discussed in this study centre upon the various aspects of that interpretation. The debate which culminated in the decision of the General Assembly to approve the first eight Trusteeship Agreements, while leaving the phrase undefined, is described in the Analytical Summary of Practice.

2. The present study does not discuss the "terms of trusteeship" mentioned in Article 79; these terms are dealt with in this Repertory under Article 81. Similarly, the placing of territories under the Trusteeship System is dealt with in this Repertory under Article 77. Finally, material relating to "any alteration or amendment" as well as to approval of the Trusteeship Agreements will be found in this Repertory under Articles 83 and 85.

I. GENERAL SURVEY

3. The application of Article 79 was discussed in connexion with the approval of the Trusteeship Agreements as follows: (1) the first eight Trusteeship Agreements, by the General Assembly at the second part of its first session; (2) the Agreement for Nauru, by the General Assembly at its second session; (3) the Agreement for the Trust Territory of the Pacific Islands, by the Security Council at its 124th meeting; (4) the Agreement for Somaliland under Italian administration, by the General Assembly at its fifth session.

4. For the first eight Trusteeship Agreements, the initiative in proposing the Agreement was taken in each case by the Mandatory Power. In some cases, the Mandatory Power informed the General Assembly that it had submitted the draft Agreement to other States before submitting it to the United Nations. During the consideration of the Agreements in the Fourth Committee, specific claims were put forward by a number of States which considered themselves to be directly concerned with respect to certain territories, and the general question whether the permanent members of the Security Council and the Trusteeship Council were entitled to claim that they were directly concerned was debated. The claims were not pressed in respect of any particular Territory, nor was the phrase "states directly concerned" defined. Instead, the General Assembly approved the individual Agreements on the understanding that the question of which States were or were not directly concerned within the meaning of

Article 79 had not been prejudged and that no State had waived or prejudiced its right to make such a claim in relation to the approval of subsequent Agreements or to the alteration or amendment of those already approved.

5. The Trusteeship Agreement for Nauru was similarly proposed by the Mandatory Power and approved by the General Assembly without any decision as to the definition of "states directly concerned".

6. In the case of the former Japanese Mandated Islands, the terms of trusteeship were proposed by the State administering the Territory. Before submitting the draft Agreement to the United Nations, it had circulated it to those Members of the United Nations which, in its view, might have special interests in the Islands. No Member asserted a claim to be directly concerned and the Agreement, which provided that the Territory should be a strategic area, was approved by the Security Council. The Council took no decision respecting the definition of the phrase "states directly concerned".

7. In the case of Somaliland, the decision to place the Territory under trusteeship was made by the General Assembly itself, in pursuance of the Treaty of Peace with Italy. The Assembly requested the Trusteeship Council to negotiate with Italy, the prospective Administering Authority. The negotiations were carried out on the basis of a draft Agreement proposed by Italy and of provisions proposed by two other members of the Trusteeship Council. One Member of the United Nations, Ethiopia, claimed to be directly concerned and was invited to participate without vote in the proceedings of the Council, without prejudice to its claim. The Council subsequently adopted a draft Agreement and submitted it to the General Assembly, without taking a decision with respect to the claim of Ethiopia. When the draft Agreement was considered at the fifth session of the General Assembly, the representative of Ethiopia reasserted 1/ the claim and submitted a proposal 2/ whereby the Assembly would have declared that it had not been seized of an Agreement by the States directly concerned embodying the terms of trusteeship for the territory of former Italian Somaliland, and that, therefore, the United Nations was unable to proceed further with the question. This proposal was rejected 3/ by the Fourth Committee.

8. Since no alteration or amendments of existing Trusteeship Agreements have been proposed, the question of defining the States directly concerned has never arisen in that connexion.

9. At the ninth session of the General Assembly, the United Kingdom Government proposed for inclusion in the agenda an item entitled "The future of the Trust Territory of Togoland under United Kingdom Trusteeship." 4/ The representative of the Administering Authority maintained that the people of Togoland under British administration, a Territory being administered, in accordance with the Trusteeship Agreement, 5/ as an integral part of the adjoining Gold Coast, might in the near future achieve the objectives laid down for them in Article 76 of the Charter. The

1/ G A (V), 4th Com., 175th mtg., paras. 34-43.

2/ A/C.4/L.102.

3/ G A (V), 4th Com., 176th mtg., para. 41.

4/ G A (IX), Annexes, pp. iii-vi, agenda item 52.

5/ See article 5 (b) of the Trusteeship Agreement for Togoland under British administration (G A (I/2), Suppl. No. 5, p. 33).

achievement of those objectives would necessarily involve the alteration or termination of the Trusteeship Agreement. The appropriate procedure to be followed in that respect should be worked out between the Administering Authority concerned and the United Nations. 6/

II. ANALYTICAL SUMMARY OF PRACTICE

A. The question of the submission of draft Trusteeship Agreements

10. The Charter does not explicitly state who shall submit draft Agreements for proposed Trust Territories. By resolution 9 (I), the General Assembly invited "the States administering territories now held under mandate to undertake practical steps ... for the implementation of Article 79 of the Charter ... in order to submit these agreements for approval." Thus, in practice, the States effectively exercising responsibility for the administration of territories have assumed the initiative in submitting draft Trusteeship Agreements; that is to say, the United Kingdom for Tanganyika, the Cameroons and Togoland under British administration; France for the Cameroons and Togoland under French administration; Belgium for Ruanda-Urundi; Australia for New Guinea; New Zealand for Western Samoa; Australia, New Zealand and the United Kingdom for Nauru; and the United States for the strategic area of the Pacific Islands. Although, in the last instance, Japan held those Islands under a League of Nations Mandate, it was the United States which controlled and administered the area as a result of the Second World War and which submitted 7/ a draft Trusteeship Agreement to the United Nations.

11. The case of Somaliland has so far been the exception to the general practice. Italy had renounced all claim to the Territory under the Treaty of Peace signed at Paris in 1947. That Treaty had provided that, in the absence of agreement between France, the United Kingdom, the United States and the USSR, the General Assembly would be called upon to determine the future status of the former Italian colonies. Under General Assembly resolution 289 A (IV), section B, paragraph 3, however, Italy was designated as the Administering Authority for the Trust Territory of Somaliland, 8/ and under paragraph 5 of the same resolution, the Trusteeship Council was required to "negotiate with the Administering Authority the draft of a Trusteeship Agreement for submission to the General Assembly". Subsequently, Italy 9/ and the Philippines 10/ each submitted a draft Agreement for Somaliland, and the Dominican Republic made certain suggestions 11/ pertaining thereto. The Committee on Italian Somaliland 12/ considered these together with a comparative table 13/ of the draft declaration of

6/ G A (IX), 4th Com., 449th mtg., paras. 5-7. See also General Assembly resolution 860 (IX), adopted on 14 December 1954 by 44 votes to none, with 12 abstentions whereby the Assembly decided to request "the Trusteeship Council to dispatch a special mission to the Trust Territories of Togoland under British administration and Togoland under French administration to make a special study of ... problems" there.

7/ S C, 2nd yr., No. 23, 116th mtg.

8/ As a result of the Second World War, the United Kingdom took over the administration of Italian Somaliland.

9/ T C (VI), Annexes, vol. I, pp. 97-101, T/429.

10/ Ibid., pp. 103-111, T/440 and Corr.1 and Corr.1/Add.1.

11/ T/AC.18/L.3

12/ Established by T C resolution 112 (S-2).

13/ T/AC.18/L.5. For the printed text of the proposal submitted by India, see T C (S-2), pp. 89 and 90, Annex, T/420.

constitutional principles submitted by the delegations of India and the Philippines and the Government of Italy, and on the basis of all of these texts submitted a report 14/ containing a draft Agreement 15/ for the consideration of the Trusteeship Council.

B. The interpretation of the phrase "states directly concerned"

1. *The phrase "states directly concerned" in relation to the preparation and submission of draft Trusteeship Agreements*

12. Article 79 only partially defines the words "states directly concerned" in the phrase "including the mandatory power in the case of territories held under mandate by a Member of the United Nations". During the discussion 16/ in the Fourth Committee at the second part of the first session of the General Assembly, it was argued that the Mandatory Power should be included among the States directly concerned, because it could have been asserted that only those States which had participated in the original establishment of the Mandates System were States directly concerned. Several of the Powers responsible for the administration of territories to be placed under trusteeship had submitted draft Agreements to other States before submitting them to the United Nations. One such Power declared that it had, without prejudice to the ultimate definition of the phrase, submitted draft Agreements to those States which it considered to be the "states directly concerned", as well as to the great Powers, for their information.

13. That procedure was criticized by several Members. It was held 17/ that the decision as to whom it should consult should not be left to the Mandatory Power; it was further held that it was a unilateral and arbitrary decision by the Mandatory Powers contrary to the provision of Article 79.

14. In the course of discussion 18/ of one draft Trusteeship Agreement in the Security Council, one delegation expressed the belief that it had met the requirements of Article 79 by transmitting copies of a draft Trusteeship Agreement for the former Japanese Mandated Islands to all Members of the United Nations which, in its view, might have special interests in these Islands, and by submitting the draft Agreement formally to the Security Council for its approval. That delegation maintained that its Government was not aware that any other Member of the United Nations had asserted any claim to administer these Islands under trusteeship. Subsequently, when the Security Council was discussing the power to alter, amend or terminate an Agreement which it had approved, the view was expressed that the Council, by disregarding the States directly concerned, failed to give proper effect to Article 79. 19/

14/ T/449 and Add.1.

15/ T/449/Rev.1.

16/ For texts of relevant statements, see G A (I/2), 4th Com., part II, 2nd mtg., New Zealand, p. 5; 27th mtg., Australia, p. 206. See also G A (I/1), 4th Com., 3rd mtg., United Kingdom, p. 9.

17/ For texts of relevant statements, see G A (I/2), Plen., 61st mtg., India, p. 1269; 62nd mtg., USSR, p. 1281.

18/ For texts of relevant statements, see S C, 2nd yr., No. 20, 113th mtg., United States, p. 413; No. 31, 124th mtg., Syria, pp. 672 and 673.

19/ See also in this Repertory under Article 83.

2. *Specific claims of States to be considered "states directly concerned" 20/*

15. Specific claims were put forward on behalf of certain States to be considered as being "directly concerned" with respect to particular draft Trusteeship Agreements.

16. For example, the representatives of Egypt, Iraq, Lebanon and Saudi Arabia held that the Arab States were directly concerned in matters relating to Arab countries and to countries in which there were Arab populations which might be placed under trusteeship. 21/

17. With respect to the proposed Trusteeship Agreement for Tanganyika, the representative of India, in the Fourth Committee, asserted a claim that his country was a State directly concerned. He noted that, although the possibility of designating India to administer German East Africa under a League of Nations Mandate had been considered at one time after the First World War, the Administering Authority for Tanganyika had not consulted the Government of India before submitting a draft Agreement for the territory. His Government took the position that a latent title, or sovereignty, rested with the people. Operatively, however, title lay with the Allied and Associated Powers, and India, having been one of those Powers, had a claim as a State directly concerned. To substantiate that claim further, he invoked the size of the Indian population in that territory, the large part it played in the development of the territory's commerce and trade, India's strategic position in the Indian Ocean and the successful participation of Indian troops in the liberation and defence of Tanganyika in both world wars. 22/ In plenary meeting, 23/ India withdrew its claim to be considered directly concerned in respect of the Agreement for Tanganyika, on the understanding that it did not renounce that claim, and consequently reserved its right to be considered as directly concerned in any future amendments of that Agreement.

18. Without presuming to define the expression "states directly concerned", the representative of China contended 24/ that his country had an irrefutable claim to be a State directly concerned in Trusteeship Agreements, not only because it was a permanent member of the Trusteeship Council, but because of its geographical position and of the great number of Chinese settlers in some Trust Territories.

20/ Under Article 31 of the Charter, representatives of the Far Eastern Commission at that time not members of the Security Council, that is to say, Canada, India, the Netherlands, New Zealand and the Philippines, participated in the discussions of the draft Agreement for the Trust Territory of the Pacific Islands. (See S C, 2nd yr., Nos. 20, 23, 25 and 26, 113th, 116th, 118th and 119th mtgs.).

21/ G A (I/2), Plen., annex IV to annex 72 (A/258 and Add.1), Egypt, p. 1556; Iraq, p. 1553; Lebanon, p. 1553; Saudi Arabia, p. 1555. Also G A (I/2), 4th Com., part II, 24th mtg; p. 179.

22/ G A (I/2), 4th Com., part II, 28th mtg., pp. 210 and 211.

23/ G A (I/2), Plen., 61st mtg., pp. 1268 and 1269; and annex III to annex 72 (A/258 and Add.1), p. 1547.

24/ G A (I/2), 4th Com., part II, 23rd mtg., p. 177; 24th mtg., p. 185.

19. As early as January 1946, the delegation of Ethiopia made a statement 25/ in which it recalled its earlier interventions at San Francisco to the effect that nothing done there implied a decision or recommendation as to the future of territories which might be taken from enemy States in consequence of the war. On 21 November 1949, at its fourth session, the General Assembly adopted resolution 289 A (IV) concerning the disposal of the former Italian colonies. With regard to Italian Somaliland, the Assembly recommended, that during a period of ten years from the date of approval of a Trusteeship Agreement by the General Assembly, the territory should be placed under the International Trusteeship System with Italy as the Administering Authority. At the time of the adoption of the resolution and later at the second special session of the Trusteeship Council the representative of Ethiopia expressed reservations to section B of General Assembly resolution 289 A (IV), on the ground that Ethiopia was a "state directly concerned". For reasons of geographical contiguity, cultural affinity and national security, the representative of Ethiopia felt that a Trusteeship Agreement for former Italian Somaliland should not be drafted without the participation and agreement of Ethiopia. 26/

20. At the second special session of the Trusteeship Council, the President ruled that Italy be invited to participate in the work of the Council concerning the draft Agreement for Somaliland. When one representative reserved his position in this matter, the President put this ruling to the vote and the Council upheld it by 9 votes to none, with 1 abstention. 27/ The representatives of Colombia, Egypt (members of the United Nations Advisory Council for Somaliland but not members of the Trusteeship Council), 28/ and Ethiopia were then invited 29/ by the President of the Council to participate, in an advisory capacity and without the right to vote, in the negotiation of a Trusteeship Agreement for the Trust Territory of Somaliland, in view of their particular concern in that Agreement, and without prejudice to the interpretation of Article 79 as invoked by Ethiopia. The representative of India 30/ was also invited to take part in the discussion of the constitutional question. 31/

21. At the fifth session of the General Assembly, when the Fourth Committee began to consider the special report 32/ of the Trusteeship Council containing the draft Trusteeship Agreement for Somaliland under Italian administration, the representative of Ethiopia submitted a draft resolution 33/ under which the General Assembly would have declared:

"1. That the Trusteeship Committee of the General Assembly, has not been seized of an Agreement by the States directly concerned, containing the Terms of Trusteeship, including all alterations or amendments of the same, for the placing of the Territory of the Former Italian Somaliland under the trusteeship system, and

25/ G A (I/1), 4th Com., 10th mtg., p. 35.

26/ G A (IV), Plen., 249th mtg., paras. 54-83; 250th mtg., paras. 30-37; T C (S-2), Annex, p. 90, T/421.

27/ T C (S-2), 1st mtg., paras. 46 and 52.

28/ The third member of the Advisory Council, the Philippines, was a member of the Trusteeship Council.

29/ T C (S-2), 2nd mtg., para. 33.

30/ India had proposed a constitution to be annexed to and to form part of the Trusteeship Agreement for any of the former Italian colonies that might be placed under the International Trusteeship System. See T C (S-2), Annex, pp. 89 and 90, T/420.

31/ T C (S-2), 2nd mtg., para. 35.

32/ G A (V), Suppl. No. 10 (A/1294).

33/ A/C.4/L.102.

"2. That no Agreement having been submitted to the United Nations for its approval in accordance with the provisions of Articles 79, 83 and 85 of the Charter, the United Nations are unable to proceed further with the question raised by the provisions of Recommendations of 21 November 1949, Part B with respect to Italian Somaliland, Document A/1124, 22 November 1949."

22. The representative of Ethiopia stated that his Government had not given its support to the draft Trusteeship Agreement, and that under Article 79, the General Assembly and, hence, the Fourth Committee, could approve a Trusteeship Agreement only if its terms had been accepted by the States directly concerned. In the view of his delegation, that condition had not been fulfilled in the case in point; it therefore followed that the draft Trusteeship Agreement before the Fourth Committee had not been drawn up in conformity with the provisions of the Charter. He recalled that it was not the first time that Ethiopia had raised the question. Through statements made by representatives of Ethiopia before Sub-Committee 17 of the First Committee and before a plenary meeting of the General Assembly, as well as in memoranda presented to the Trusteeship Council, both the General Assembly and the Trusteeship Council had been made fully aware of Ethiopia's position. ^{34/}

23. In support of the draft resolution submitted by Ethiopia it was again stated ^{35/} that the draft Trusteeship Agreement had not been drawn up in accordance with Article 79. The draft resolution was opposed on procedural grounds; it was pointed out ^{36/} that the General Assembly had instructed the Fourth Committee to take up the study of the items on its agenda, and the approval of the draft Trusteeship Agreement for Italian Somaliland was one of those items. Without express instructions from the General Assembly, the Committee was not entitled to suspend its consideration of any item or to delete an item from its agenda. The draft resolution was rejected by 34 votes to 6, with 7 abstentions.

24. A more general discussion on the question whether the five Powers named in Article 23 might also claim to be "states directly concerned" by virtue of their permanent membership in both the Security Council and the Trusteeship Council arose during consideration by Sub-Committee 1 of the Fourth Committee at the second part of the first session of the General Assembly of the draft Trusteeship Agreements for New Guinea and the African territories under mandate (see paragraph 48 below). Discussion centred on the determination of the underlying question of the interpretation of the phrase "states directly concerned" in Article 79. ^{37/}

25. In support of the position that the five permanent members of the Trusteeship Council and the Security Council could claim to be considered as "states directly concerned", the views set forth below were among those expressed. (1) Their special position as permanent members of the Trusteeship Council emphasized their responsibility

^{34/} G A (V), 4th Com., 175th mtg., paras. 34-43.

^{35/} For texts of relevant statements, see G A (V), 4th Com., 176th mtg., Poland, para. 15; USSR, para. 11.

^{36/} For texts of relevant statements, see G A (V), 4th Com., 176th mtg., Belgium, para. 14; Canada, paras. 5 and 6; Cuba, paras. 12 and 13; Dominican Republic, para. 18; Iraq, para. 3; Norway, para. 25; Peru, para. 17; Philippines, paras. 21-24 and 28.

^{37/} For texts of relevant statements, see G A (I/2), 4th Com., part II, 23rd mtg.: USSR, pp. 174 and 175; United States, pp. 175 and 176; 24th mtg.: Chairman (Uruguay), p. 185; France, p. 180; United Kingdom, pp. 178 and 179; 27th mtg.: USSR, p. 201; United States, p. 201.

for Trust Territories. (2) As permanent members of the Security Council, they had a further responsibility in as much as the Trust Territories, according to Articles 76 and 84, were called upon to play their part in the attainment of international peace and security within the general system of measures which were within the scope of the Security Council. In addition, however, it was stated that the foregoing arguments did not mean that each of the five great Powers would actually assert its right regarding all Trust Territories.

26. In opposition to those views, the opinions set forth below were among those expressed. (1) The fact that the special position of the five great Powers had been recognized by conferring upon them permanent membership in the Trusteeship Council and the Security Council did not necessarily justify giving them a further special position. (2) In some cases, there might be good reasons to consider those States as being directly concerned, but that could not be concluded from the mere fact of their being permanent members of the two Councils. (3) To accord the five great Powers a special position would be tantamount to granting them a veto power over all the terms of the Trusteeship Agreements and that was not then acceptable. 38/

27. It was agreed on both sides that other States, both large and small, could also claim to be recognized as States directly concerned with respect to certain Trust Territories.

28. It was agreed by those representatives who adopted a middle ground between the two opposing views that, while the five Powers mentioned in Article 23 might have a right to be considered States directly concerned, the Mandatory Power concerned in a particular Trusteeship Agreement did not necessarily have to recognize that their claims were valid if they were not pressed. 39/

29. At the suggestion of the Chairman, the representatives holding opposing views on the question entered into informal consultations on the question of delimiting the category of "states directly concerned". They reported to the Sub-Committee that it had not been possible, in the time available, to achieve a solution.

3. The question of the criteria upon which a definition of the phrase "states directly concerned" should be based

30. An attempt was made at the first part of the first session of the General Assembly to set up general criteria in order to define the phrase "states directly concerned". It was suggested 40/ that there were three categories of States directly concerned within the meaning of Article 79: (1) the Mandatory Powers in the case of territories under mandate; (2) States which voluntarily placed their colonies under the Trusteeship System; and (3) States concerned, by virtue of geographic proximity, or cultural, linguistic, economic, social and continued historical ties, with the territories to be placed under Trusteeship.

38/ In the course of the discussion it was denied that the inclusion of the five great Powers in the category of "states directly concerned" would give them a veto power over Trusteeship Agreements. There was no intention to establish the right of veto in the Trusteeship System for any Power.

39/ Ibid., 24th mtg., p. 179.

40/ G A (I/1), 4th Com., 6th mtg., Iraq, p. 20.

31. In the course of the continuation of the discussion on the matter at the second part of the first session of the Assembly, it was argued ^{41/} that, since Article 79 specified that the concern of a State in a territory must be direct if it was a juridical interest. This argument was reinforced by Article 77 (1) (c) which provided for the voluntary placing under the Trusteeship System of territories other than those held under mandate or taken from enemy States during the Second World War. In the case of such territories, it was improbable that the Charter required the consent of States other than the Administering Power, if there was nothing in their history to justify seeking their consent.

32. Finally, it was contended that the phrase in Article 79 could apply to one or more States and that it should be interpreted to mean "the States or State directly concerned". According to this interpretation, only the Mandatory Power would be "directly concerned" in the first eight Trusteeship Agreements.

4. The question of the organ competent to define the phrase "states directly concerned"

33. As early as the first part of the first session of the General Assembly, opinion was divided on the question of the organ possessing competence to define the phrase in Article 79 "states directly concerned". It was argued ^{42/} in the Fourth Committee that normally the Mandatory Powers, using the best of common sense to determine which States were "directly concerned", should initiate negotiations for Trusteeship Agreements. It was also stated that a Member desiring to place territories under the International Trusteeship System should notify the Secretary-General of the names of States with which it intended to negotiate.

34. With regard to the competence of the Trusteeship Council to determine which States were "directly concerned" in respect of specific draft Trusteeship Agreements, it was stated that the definition should be made by the Trusteeship Council as individual cases arose; in reply it was contended that the Council had no authority of its own; its function was to assist the General Assembly.

35. In reply to the suggestion that the matter be dealt with by the International Court of Justice, it was contended that the matter was of a political, not of a legal nature; the appropriate body to deal with it would, therefore, be the General Assembly. The suggestion was also made that the Secretariat should explore the documentation of the San Francisco Conference in order to discover if the meaning of the phrase "states directly concerned" could be further elucidated.

36. It was, however, the question of the competence of the Fourth Committee which evoked the most discussion on this subject. It was asserted that the Fourth Committee was not competent to deal with the question, it having been decided at San Francisco and in the Preparatory Commission that the term could not be defined more completely. It was further maintained that the Fourth Committee would acquire competence only when the General Assembly asked it to deal with the matter in the course of consideration of the draft Trusteeship Agreements.

^{41/} For texts of relevant statements, see G A (I/2), 4th Com., part I, 16th mtg. United States, pp. 75 and 76; part II, 27th mtg., Australia, p. 206.

^{42/} For texts of relevant statements, see G A (I/1), 4th Com., 6th mtg.: Canada, p. 45, annex 2; Netherlands, pp. 20 and 21; New Zealand, p. 23; Philippines, p. 21; Union of South Africa, p. 20; United States, pp. 19 and 21; 7th mtg.: Syria, p. 24.

37. At the end of this discussion, upon request, the Rapporteur read to the Committee a report of the Juridical Committee at the San Francisco Conference (Commission IV, Committee 2) wherein the opinion was advanced that each organ of the United Nations should be at liberty to interpret those portions of the Charter which related to that organ. ^{43/}

38. It may, however, be noted in connexion with the argument that the Trusteeship Council was competent to decide which States were to be considered as "states directly concerned", that the Council, at its second special session, in the course of the discussion of the draft Trusteeship Agreement for Somaliland under Italian administration, invited the Administering Authority concerned, which was not a Member of the United Nations, to take part in its deliberations. The argument was advanced that this action showed that the Trusteeship Council was competent to decide which States were directly concerned.

*5. The question of the need for a definition of the phrase
"states directly concerned"*

39. At the first part of the first session of the General Assembly, an amendment to the relevant text of the Report of the Preparatory Commission was submitted in the Fourth Committee. By this amendment, "states directly concerned" would be urged to take all practical steps essential to the implementation of Article 79. ^{44/} The mover of the amendment having been asked to define the term "states directly concerned", replied that (1) it had not been possible to define the phrase more completely at San Francisco and in the Preparatory Commission; (2) the amendment followed the language of the Charter; (3) when agreements were submitted for approval, the Assembly could decide whether the parties were in fact directly concerned; and (4) to engage in a long and academic discussion on the subject at that time would be inappropriate. ^{45/}

40. The question whether the definition of "states directly concerned" was necessary prior to the approval of Trusteeship Agreements continued to arise, however, throughout the first and second parts of the first session of the General Assembly.

41. Those advocating an early definition expressed the views ^{46/} that (1) it was essential to the establishment of the International Trusteeship System, which rested entirely upon the conclusion of Trusteeship Agreements; (2) obstacles to agreement on a definition would be overcome at an early stage more easily than at a later date; (3) a definition would avoid a duplication of effort in the negotiation of Trusteeship Agreements; (4) it was desirable because of the great intricacy of the problem; and (5) a definition would ensure that discussion of Agreements remained within the limits of legality. ^{47/}

^{43/} G A (I/1), 4th Com., 6th mtg., p. 22.

^{44/} G A (I/1), 4th Com., p. 43, annex 1, A/C.4/3.

^{45/} For texts of relevant statements, see G A (I/1), 4th Com., 5th mtg., Philippines, p. 17; Syria, p. 18; 6th mtg., United States, pp. 19 and 20.

^{46/} For texts of relevant statements, see G A (I/1), 4th Com., 6th mtg.: Egypt, p. 20; Iraq, p. 20; Lebanon, p. 21; 7th mtg.: Egypt, pp. 26 and 29; Syria, p. 24.

^{47/} G A (I/1), Plen., 27th mtg., Egypt, p. 371.

42. Some representatives were not convinced that a definition of the phrase would facilitate an early establishment of the Trusteeship System; they expressed the view 48/ that (1) it might delay it; 49/ (2) for the purpose of entering into Agreements, it would be necessary only to conceive that certain States were going to be affected by them; (3) it was extremely difficult to determine categorically in advance what interests should be considered and what nations had to be consulted in drawing up Trusteeship Agreements; (4) the term could not be defined at that juncture without doing harm to the interests of some countries which might be directly concerned.

43. It was also stated that there was a difference between giving the phrase a meaning by the processes of argument and giving practical effect to it by the processes of negotiating and approving Trusteeship Agreements. It might even be unnecessary for the General Assembly ever to give a formal definition.

44. After the Mandatory Powers had stated their intention to negotiate Trusteeship Agreements, the view was expressed in plenary meeting that progress in this matter did not need to await a prior legalistic definition of the phrase "states directly concerned", which might in practice impede the full and prompt establishment of the International Trusteeship System. 50/

6. The question of the approval of draft Trusteeship Agreements in the absence of a definition of the phrase "states directly concerned"

45. At the first part of the first session of the General Assembly, the Fourth Committee considered chapter IV of the Report of the Preparatory Commission. The Commission had recommended that the General Assembly should adopt a draft resolution calling upon the States administering territories under League of Nations Mandate to undertake practical steps, in concert with other States directly concerned for the implementation of Article 79 of the Charter in order to submit draft Trusteeship Agreements for approval preferably not later than at the second part of the first session of the General Assembly. 51/

46. It was proposed that the numerous amendments submitted in connexion with section 1 of chapter IV of the Report of the Preparatory Commission be referred to a sub-committee. Another suggestion was to establish a separate sub-committee to consider a definition of the phrase "states directly concerned". The Chairman, suggesting that a sufficiently comprehensive body would consider all questions and amendments in connexion with section 1 of chapter IV of the Report, 52/ established a sub-committee for this purpose.

47. With respect to Chapters XII and XIII of the Charter, the Sub-Committee recommended the adoption of the text of the Preparatory Commission as to the invitation to be addressed to the Mandatory Powers. Draft amendments had been submitted by

48/ For texts of relevant statements, see G A (I/1), 4th Com., 6th mtg.: Australia, p. 21; Union of South Africa, p. 20; 7th mtg.: China, p. 25; 17th mtg.: Czechoslovakia, pp. 85 and 86.

49/ See also G A (I/2), 4th Com., part I, 17th mtg., Czechoslovakia, pp. 85 and 86.

50/ G A (I/1), Plen., 27th mtg., United States, p. 368.

51/ Report of the Preparatory Commission of the United Nations, PC/20, 23 Dec. 1945, chap. IV, section 1, p. 49.

52/ G A (I/1), 4th Com., 8th mtg., pp. 28-30.

Belgium, 53/ Canada 54/ and Iraq 55/ relating to the definition of the phrase "states directly concerned". In view of the limited time available to the Sub-Committee and the importance and complexity of the problems involved, these amendments were withdrawn without prejudice to their consideration at a later date. 56/

48. The draft resolution recommended by the Sub-Committee to the Fourth Committee was unanimously adopted by the latter body. 57/ This draft resolution was then unanimously adopted by the General Assembly by 41 votes, ten Members being absent. 58/

49. At the second part of the first session of the General Assembly, the Fourth Committee decided to establish a sub-committee to deal with the question of Trusteeship Agreements. 59/ This body, known as Sub-Committee 1, was composed of the representatives of seventeen Member States 60/ plus the representative of one State which desired to present modifications to the draft Agreements.

50. Sub-Committee 1 decided 61/ to begin its work by considering the draft Trusteeship Agreement for Western Samoa. A question immediately arose with regard to the phrase in the preamble:

"the General Assembly ... having satisfied itself that the provisions of Article 79 of the Charter have been complied with,".

The representative of the Mandatory Power stated that his Government had had to proceed pragmatically, but that action had been taken without thereby prejudicing the rights of any States. If the selection of States considered to be "directly concerned" within the meaning of Article 79 had been wrong, the Fourth Committee and the General Assembly could later rectify the error. 62/ Subsequently, it was suggested that the words "having satisfied itself that the provisions of Article 79 of the Charter have been complied with" should be deleted. The Mandatory Power was granted time to consider the suggestion, and the Member requesting the deletion remained free to raise the question of the "states directly concerned" at a later stage. 63/ Subsequently, the Mandatory Power announced its agreement to the deletion of the phrase from the Agreement for Western Samoa. 64/

51. Sub-Committee 1 considered the first eight draft Trusteeship Agreements article by article without taking a final decision on the preambles to the Agreements where reference was made to Article 79. As the Sub-Committee was approaching the completion of its task, one representative asserted 65/ that the negotiation of the draft Trusteeship Agreements had not been carried out in accordance with Article 79. (For subsequent steps taken with regard to this statement, see paragraph 29 above).

53/ Ibid., p. 46, annex 2 b.

54/ Ibid., p. 46, annex 2 a.

55/ Ibid., p. 48, annex 5.

56/ Ibid., 10th mtg., p. 33.

57/ Ibid., p. 35.

58/ G A (I/1), Plen., 27th mtg., p. 376.

59/ G A (I/2), 4th Com., part I, 20th mtg., p. 116.

60/ Ibid., p. 120.

61/ G A (I/2), 4th Com., part II, 1st mtg., p. 3.

62/ Ibid., 2nd mtg., p. 5.

63/ Ibid., 14th mtg., pp. 104 and 105.

64/ Ibid., 24th mtg., p. 180; 27th mtg., p. 217.

65/ Ibid., 23rd mtg., p. 174.

52. Another representative assumed 66/ that the "states directly concerned" comprised those which had proposed modifications to the draft agreements, that is to say the seventeen members of the Sub-Committee with the addition of the Byelorussian SSR. Of these eighteen, twelve had accepted the draft Agreements; and, of the six to which the draft Agreements were unacceptable, three had not claimed to be directly concerned. Therefore, it was difficult to conceive of a definition of the phrase that did not include every Member of the United Nations.

53. In connexion with the interpretation of the phrase "states directly concerned", three proposals set forth below were submitted.

(1) The draft Trusteeship Agreements should be approved by the General Assembly without prejudice to future determination of the "states directly concerned". 67/

(2) The Sub-Committee should establish a drafting sub-committee or working group to attempt to work out a definition of the phrase; 68/

(3) The preambles to the various Agreements should be considered consecutively with a view to determining whether they were acceptable as they stood, and whether any States had advanced claims to be directly concerned. If so, a determination should be made of the basis on which those claims had been advanced. 69/

54. This latter proposal was later withdrawn 70/ by the Chairman and the Sub-Committee, by 10 votes to 4, with 3 abstentions, rejected the proposal to establish a drafting sub-committee to consider the question of the "states directly concerned" with a view to arriving at a definition.

55. Meanwhile, discussion had been taking place on the situation which would obtain if no definition of the phrase could be agreed upon. The views set forth below were among those expressed. 71/ (1) Under Article 79, a decision was required only as to whether States claiming to be directly concerned actually were directly concerned and had been consulted. (2) The General Assembly was competent to approve the drafts whether or not a general definition of the phrase had been reached. (3) Once a draft Trusteeship Agreement had been approved by the General Assembly, no court and no Member State could ever challenge its validity. (4) If some fifty States sitting as the General Assembly accepted the Agreements, there could be no doubt that all "states directly concerned" had given their assent thereto. (5) It had not been the deliberate intention of the authors of Article 79 to grant the power to veto an Agreement to any and every State that might consider itself "directly concerned" in any particular territory. (6) The proposal that the General Assembly should approve the Agreements without prejudice to a future determination of the States "directly concerned" (paragraph 53 (1) above) did not constitute a waiver of rights; on the contrary, it was designed to protect the rights of States which desired to vote in favour of the Agreements without renouncing their rights as "states directly concerned".

66/ Ibid., 27th mtg., p. 205.

67/ Ibid., 27th mtg., p. 201.

68/ Ibid., 27th mtg., p. 201.

69/ Ibid., p. 202.

70/ Ibid., p. 209.

71/ For texts of relevant statements, see G A (I/2), 4th Com., part II, 24th mtg.: Belgium, p. 182; 27th mtg.: Czechoslovakia, p. 207; United States, pp. 208 and 209; 28th mtg.: United States, p. 219.

56. The Sub-Committee finally adopted a proposal to include in the report of the Rapporteur a statement to the effect that approval of the terms of trusteeship at that session did not prejudice the right of any State to claim to be directly concerned in relation to approval of subsequent draft Agreements or to the alteration or amendment of those already approved. The statement was adopted by 13 votes to 3, with 1 abstention, and was subsequently embodied in the report of the Fourth Committee to the General Assembly. It read as follows:

"Approval of any terms of trusteeship by this session of the General Assembly should be on the following understanding with respect to 'States directly concerned':

"All Members of the United Nations have had an opportunity to present their views with reference to the terms of trusteeship now proposed to the General Assembly for approval. There has, however, been no specification by the General Assembly of 'States directly concerned' in relation to the proposed Trust Territories. Accordingly, the General Assembly in approving the terms of trusteeship does not prejudge the question of what States are or are not 'directly concerned' within the meaning of Article 79. It recognizes that no State has waived or prejudiced its right hereafter to claim to be such a 'State directly concerned' in relation to approval of subsequently proposed trusteeship agreements and any alteration or amendment of those now approved and that the procedure to be followed in the future with reference to such matters may be subject to later determination." 72/

57. One representative then took the position 73/ that the adoption of the proposal was unlawful in the light of Article 79, and that, consequently, the Trusteeship Agreements would be invalid. That statement was repeated substantially when the proposal was adopted 74/ in the plenary session of the General Assembly. The same objection was made the following year in respect of the approval of the draft Agreement for Nauru. 75/

58. With regard to the preambles to the draft Trusteeship Agreements, the following proposals were accepted 76/ by the Sub-Committee by 9 votes to 2, with 6 abstentions:

- (a) The Agreement for New Guinea would retain its original preamble;
- (b) The following words would be deleted from the Agreement for Western Samoa:

"agreed upon by the States directly concerned, including the mandatory power, and"
and

"in accordance with the terms of the said Charter, having satisfied itself that the provisions of Article 79 of the Charter have been complied with";

72/ G A (I/2), Plen., annex III to annex 72, (A/258 and Add.1), p. 1546.

73/ G A (I/2), 4th Com., part II, 27th mtg., USSR, p. 209.

74/ G A (I/2), Plen., 62nd mtg., p. 1281.

75/ G A (II), Plen., 104th mtg., p. 570; G A (II), 4th Com., 46th mtg., pp. 103 and 104.

76/ G A (I/2), 4th Com., part I, annex 22 a, pp. 302 and 303.

(c) The following words would be deleted from the Agreements for Tanganyika, and for the Cameroons and Togoland under British administration:

"the procedure for the approval of the terms of which by the United Nations is prescribed by Articles 79, 83 and 85 of the said Charter;"

and

"in accordance with Article 85 of the said Charter, having satisfied itself that the requirements of Article 79 of the said Charter have been complied with";

(d) A statement by the representatives of Belgium and France, expressing the opinion that, in view of the statement made by the representative of the USSR (see paragraph 57 above), they could not agree to the deletion of the reference to Article 79 in the preambles of the Trusteeship Agreements submitted by them. Wishing, however, to facilitate a solution, they would submit their Trusteeship Agreements without the draft resolutions which constituted their preambles. They would leave to the General Assembly itself the formulation of the text of the resolution.

59. The Sub-Committee accepted the revised draft of the preambles by 13 votes to 2, with 2 abstentions, and unanimously adopted the report of the Rapporteur containing those texts. 77/

60. When the matter was brought before the General Assembly, one delegation, declaring that so far it had not generally been determined which States should be considered as directly concerned, presented a draft resolution 78/ under which the General Assembly would have considered that the first eight Trusteeship Agreements had been drafted contrary to the fundamental requirements of the United Nations Charter regarding the Trusteeship System. The Assembly, therefore, would have (1) rejected the draft Agreements submitted for these territories under mandate as being inconsistent with the Charter; and (2) recommended to the United Kingdom, France, Belgium, Australia and New Zealand to submit for consideration of the General Assembly new draft Trusteeship Agreements for the territories under mandate, drawn up in conformity with the Charter. The Assembly rejected 79/ this draft resolution by 34 votes to 6, with 11 abstentions.

61. The General Assembly adopted the draft Trusteeship Agreements for New Guinea, Ruanda-Urundi, Western Samoa, Tanganyika, and the Cameroons and Togoland under British administration by 41 votes to 6, with 5 abstentions. The draft Trusteeship Agreements for the Cameroons and Togoland under French administration were adopted by 41 votes to 5, with 6 abstentions. 80/

77/ G A (I/2), 4th Com., part II, 28th mtg., p. 223.

78/ G A (I/2), Plen., 62nd mtg., p. 1282.

79/ Ibid., p. 1286.

80/ Ibid., pp. 1287 and 1288. See also in this Repertory under Article 16.

